

AMENDED IN ASSEMBLY MAY 2, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2279

Introduced by Assembly Member Swanson

February 24, 2012

An act to amend ~~Section~~ *Sections 41320.1 and 41326* of the Education Code, relating to school districts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2279, as amended, Swanson. School districts: emergency apportionments: trustees.

Existing law authorizes the governing board of a school district to request an emergency apportionment through the Superintendent of Public Instruction if the governing board of a school district determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations. Existing law provides that if a school district accepts an emergency apportionment the Superintendent shall, among other things, appoint a trustee who has recognized expertise in management and finance, and may employ, on a short-term basis, any staff necessary to assist the trustee. Existing law also provides that the trustee, and any necessary staff, shall serve until the emergency apportionment loan is repaid, the school district has adequate fiscal systems and controls in place, and the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable. *Existing law authorizes the trustee, during the period of his or her service, to stay or rescind any action of the local governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.*

This bill would instead provide that the trustee, and ~~any~~ necessary staff, shall serve until ~~the emergency apportionment loan is repaid~~, the school district has adequate fiscal systems and controls in place, ~~or~~ and the Superintendent has determined that the school district's future compliance with an approved fiscal plan is probable, *but in no event, for less than 3 years*. The bill would ~~also make a conforming change and several technical, nonsubstantive changes~~. *authorize the county superintendent of schools, after the trustee's period of service and until the loan is repaid, to stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district.*

Existing law authorizes the Superintendent, within 5 years after an appointed trustee is removed, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would instead authorize the Superintendent, within 5 years after an appointed trustee is removed or the loan is repaid, whichever occurs later, to reassume, either directly or through an administrator, all of the legal rights, duties, and powers of the governing board of the school district if the school district violates any provision of specified recovery plans approved by the Superintendent.

This bill would also make numerous nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 41320.1 of the Education Code is
- 2 amended to read:
- 3 41320.1. Acceptance by the school district of the
- 4 apportionments made pursuant to Section 41320 constitutes the
- 5 agreement by the school district to all of the following conditions:
- 6 (a) The Superintendent shall appoint a trustee who has
- 7 recognized expertise in management and finance and may employ,
- 8 on a short-term basis, ~~any~~ staff necessary to assist the trustee,
- 9 including, but not limited to, certified public accountants, as
- 10 follows:
- 11 (1) The expenses incurred by the trustee and ~~any~~ necessary staff
- 12 shall be borne by the school district.

1 (2) The Superintendent shall establish the terms and conditions
2 of the employment, including the remuneration of the trustee. The
3 trustee shall serve at the pleasure of, and report directly to, the
4 Superintendent.

5 (3) The trustee, and ~~any~~ necessary staff, shall serve until the
6 ~~loan authorized by this section is repaid~~, the school district has
7 adequate fiscal systems and controls in place, ~~or~~ and the
8 Superintendent has determined that the school district's future
9 compliance with the fiscal plan approved for the school district
10 under Section 41320 is probable, *but in no event, for less than*
11 *three years*. The Superintendent shall notify the county
12 superintendent of schools, the Legislature, the Department of
13 Finance, and the Controller no less than 60 days before the time
14 that the Superintendent expects ~~one of~~ these conditions to be met.

15 (4) Before the school district repays the loan, including interest,
16 the recipient of the loan shall select an auditor from a list
17 established by the Superintendent and the Controller to conduct
18 an audit of its fiscal systems. If the fiscal systems are deemed to
19 be inadequate, the Superintendent may retain the trustee until the
20 deficiencies are corrected. The cost of this audit and any additional
21 cost of the trustee shall be borne by the school district.

22 (5) Notwithstanding any other law, all reports submitted to the
23 trustee are public records.

24 (6) To facilitate the appointment of the trustee and the
25 employment of ~~any~~ necessary staff, for purposes of this section,
26 the Superintendent is exempt from the requirements of Article 6
27 (commencing with Section 999) of Chapter 6 of Division 4 of the
28 Military and Veterans Code and Part 2 (commencing with Section
29 10100) of Division 2 of the Public Contract Code.

30 (7) Notwithstanding any other law, the Superintendent may
31 appoint an employee of the department to act as trustee for up to
32 the duration of the trusteeship. The salary and benefits of that
33 employee shall be established by the Superintendent and paid by
34 the school district. During the time of appointment, the employee
35 is an employee of the school district, but shall remain in the same
36 retirement system under the same plan as if the employee had
37 remained in the department. Upon the expiration or termination
38 of the appointment, the employee shall have the right to return to
39 his or her former position, or to a position at substantially the same
40 level as that position, with the department. The time served in the

1 appointment shall be counted for all purposes as if the employee
2 had served that time in his or her former position with the
3 department.

4 (b) The trustee appointed by the Superintendent shall monitor
5 and review the operation of the school district. During the period
6 of his or her service, the trustee may stay or rescind ~~any~~ *an* action
7 of the ~~local~~ governing board of the school district that, in the
8 judgment of the trustee, may affect the financial condition of the
9 school district. *After the trustee's period of service, and until the*
10 *loan is repaid, the county superintendent of schools may stay or*
11 *rescind an action of the governing board of the school district that,*
12 *in his or her judgment, may affect the financial condition of the*
13 *school district.* The Superintendent may establish timelines and
14 prescribe formats for reports and other materials to be used by the
15 trustee to monitor and review the operations of the school district.
16 The trustee shall approve or reject all reports and other materials
17 required from the school district as a condition of receiving the
18 apportionment. The Superintendent, upon the recommendation of
19 the trustee, may reduce ~~any~~ *an* apportionment to the school district
20 in an amount up to two hundred dollars (\$200) per day for each
21 late or unacceptable report or other material required under this
22 part, and shall report to the Legislature ~~any~~ *a* failure of the school
23 district to comply with the requirements of this section. If the
24 Superintendent determines, at any time, that the fiscal plan
25 approved for the school district under Section 41320 is
26 unsatisfactory, he or she may modify the plan as necessary, and
27 the school district shall comply with the plan as modified.

28 (c) At the request of the Superintendent, the Controller shall
29 transfer to the department, from an apportionment to which the
30 school district would otherwise have been entitled pursuant to
31 Section 42238, the amount necessary to pay the expenses incurred
32 by the trustee and associated costs incurred by the county
33 superintendent of schools.

34 (d) For the fiscal year in which the apportionments are disbursed
35 and ~~each~~ *every* year thereafter, the Controller, or his or her
36 designee, shall cause an audit to be conducted of the books and
37 accounts of the school district, in lieu of the audit required by
38 Section 41020. At the Controller's discretion, the audit may be
39 conducted by the Controller, his or her designee, or an auditor
40 selected by the school district and approved by the Controller. The

costs of these audits shall be borne by the school district. These audits shall be required until the Controller determines, in consultation with the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(e) For ~~all~~ purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local educational agency to which he or she is assigned. For ~~the purpose~~ *purposes* of workers' compensation benefits, the trustee is an employee of the local educational agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for that purpose.

(f) Except for an individual appointed by the Superintendent as trustee pursuant to paragraph (7) of subdivision (a), the state-appointed trustee is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a member or is already a member, the trustee shall be placed on the payroll of the school district for ~~the~~ purposes of providing appropriate contributions to the system. The Superintendent may also require that ~~any~~ *an* individual appointed as trustee pursuant to paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For ~~the purpose~~ *purposes* of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local educational agency to which he or she is assigned, except that a trustee who is appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for that purpose.

SEC. 2. Section 41326 of the Education Code is amended to read:

41326. (a) Notwithstanding any other provision of this code, the acceptance by a school district of an apportionment made

1 pursuant to Section 41320 that exceeds an amount equal to 200
2 percent of the amount of the reserve recommended for that *school*
3 district under the standards and criteria adopted pursuant to Section
4 33127 constitutes the agreement by the *school* district to the
5 conditions set forth in this article. ~~Prior to~~ *Before* applying for an
6 emergency apportionment in the amount identified in this
7 subdivision, ~~a school district~~ *the governing board of a school*
8 *district* shall discuss the need for that apportionment at a regular
9 or special meeting of the governing board *of the school district*
10 and, at that meeting, shall receive testimony regarding the
11 apportionment from parents, exclusive representatives of
12 employees of the *school* district, and other members of the
13 community. For purposes of this article, “qualifying school district”
14 means a school district that accepts a loan as described in this
15 subdivision.

16 (b) The Superintendent shall assume all the legal rights, duties,
17 and powers of the governing board of a qualifying school district.
18 The Superintendent, in consultation with the county superintendent
19 of schools, shall appoint an administrator to act on his or her behalf
20 in exercising the authority described in this subdivision in
21 accordance with all of the following:

22 (1) The administrator shall serve under the direction and
23 supervision of the Superintendent until terminated by the
24 Superintendent at his or her discretion. The Superintendent shall
25 consult with the county superintendent of schools before
26 terminating the administrator.

27 (2) The administrator shall have recognized expertise in
28 management and finance.

29 (3) To facilitate the appointment of the administrator and the
30 employment of ~~any~~ necessary staff, for the purposes of this section,
31 the Superintendent ~~of Public Instruction~~ is exempt from the
32 requirements of Article 6 (commencing with Section 999) of
33 Chapter 6 of Division 4 of the Military and Veterans Code and
34 Part 2 (commencing with Section 10100) of Division 2 of the
35 Public Contract Code.

36 (4) Notwithstanding any other law, the Superintendent may
37 appoint an employee of the state or the office of the county
38 superintendent of schools to act as administrator for up to the
39 duration of the administratorship. During the tenure of his or her
40 appointment, the administrator, if he or she is an employee of the

1 state or the office of the county superintendent of schools, is an
2 employee of the school district, but shall remain in the same
3 retirement system under the same plan that has been provided by
4 his or her employment with the state or the office of the county
5 superintendent of schools. Upon the expiration or termination of
6 the appointment, the employee shall have the right to return to his
7 or her former position, or to a position at substantially the same
8 level as that position, with the state or the office of the county
9 superintendent of schools. The time served in the appointment
10 shall be counted for all purposes as if the administrator had served
11 that time in his or her former position with the state or the office
12 of the county superintendent of schools.

13 (5) Except for an individual appointed as an administrator by
14 the Superintendent of Public Instruction pursuant to paragraph (4),
15 the administrator shall be a member of the State Teachers'
16 Retirement System, if qualified, for the period of service as
17 administrator, unless he or she elects in writing not to become a
18 member. A person who is a member or retirant of the State
19 Teachers' Retirement System at the time of appointment shall
20 continue to be a member or retirant of the system for the duration
21 of the appointment. If the administrator chooses to become a
22 member or is already a member, the administrator shall be placed
23 on the payroll of the school district for the purposes of providing
24 appropriate contributions to the system. The Superintendent may
25 also require the administrator to be placed on the payroll of the
26 school district for purposes of remuneration, other benefits, and
27 payroll deductions.

28 (6) For the purposes of workers' compensation benefits, the
29 administrator is an employee of the qualifying *school* district,
30 except that an administrator appointed pursuant to paragraph (4)
31 may be deemed an employee of the state or office of the county
32 superintendent of schools, as applicable.

33 (7) The qualifying *school* district shall add the administrator as
34 a covered employee of the school district for all purposes of errors
35 and omissions liability insurance policies.

36 (8) The salary and benefits of the administrator shall be
37 established by the Superintendent of Public Instruction and paid
38 by the qualifying school district.

39 (9) The Superintendent or the administrator may, on a short-term
40 basis, employ at *school* district expense any staff necessary to

1 assist the administrator, including, but not limited to, a certified
2 public accountant.

3 (10) The administrator may do all of the following:

4 (A) Implement substantial changes in the fiscal policies and
5 practices of the *school* district, including, if necessary, the filing
6 of a petition under Chapter 9 (commencing with Section 901) of
7 Title 11 of the United States Code for the adjustment of
8 indebtedness.

9 (B) Revise the educational program of the *school* district to
10 reflect realistic income projections and pupil performance relative
11 to state standards.

12 (C) Encourage all members of the school community to accept
13 a fair share of the burden of the fiscal recovery of the *school*
14 district.

15 (D) Consult, for the purposes described in this subdivision, with
16 the governing board of the school district, the exclusive
17 representatives of the employees of the *school* district, parents,
18 and the community.

19 (E) Consult with, and seek recommendations from, the
20 Superintendent, county superintendent of schools, and the County
21 Office Fiscal Crisis and Management Assistance Team authorized
22 pursuant to subdivision (c) of Section 42127.8 for the purposes
23 described in this article.

24 (F) With the approval of the Superintendent, enter into
25 agreements on behalf of the *school* district and, subject to any
26 contractual obligation of the *school* district, change any existing
27 *school* district rules, regulations, policies, or practices as necessary
28 for the effective implementation of the recovery plans referred to
29 in Sections 41327 and 41327.1.

30 (c) (1) For the period of time during which the Superintendent
31 of ~~Public Instruction~~ exercises the authority described in
32 subdivision (b), the governing board of the qualifying school
33 district shall serve as an advisory body reporting to the
34 state-appointed administrator, and has no rights, duties, or powers,
35 and is not entitled to any stipend, benefits, or other compensation
36 from the *school* district.

37 (2) Upon the appointment of an administrator pursuant to this
38 section, the district superintendent of schools is no longer an
39 employee of the *school* district.

1 (3) A determination of the severance compensation for the
2 district superintendent *of schools* shall be made pursuant to
3 subdivision (j).

4 (d) Notwithstanding Section 35031 or any other law, the
5 administrator may, after according the employee reasonable notice
6 and the opportunity for a hearing, terminate the employment of
7 any deputy, associate, assistant superintendent of schools, or any
8 other *school* district level administrator who is employed by a
9 school district under a contract of employment signed or renewed
10 after January 1, 1992, if the employee fails to document, to the
11 satisfaction of the administrator, that ~~prior to~~ *before* the date of
12 the acceptance of the apportionment he or she either advised the
13 governing board of the *school* district, or his or her superior, that
14 actions contemplated or taken by the governing board *of the school*
15 *district* could result in the fiscal insolvency of the *school* district,
16 or took other appropriate action to avert that fiscal insolvency.

17 (e) The authority of the Superintendent, and the administrator,
18 under this section shall continue until all of the following occur:

19 (1) (A) After one complete fiscal year has elapsed following
20 the *school* district's acceptance of a loan as described in subdivision
21 (a), the administrator determines, and so notifies the Superintendent
22 and the county superintendent of schools, that future compliance
23 by the school district with the recovery plans approved pursuant
24 to paragraph (2) is probable.

25 (B) The Superintendent may return power to the governing
26 board *of the school district* for any area listed in subdivision (a)
27 of Section 41327.1 if performance under the recovery plan for that
28 area has been demonstrated to the satisfaction of the
29 Superintendent.

30 (2) The Superintendent has approved all of the recovery plans
31 referred to in subdivision (a) of Section 41327 and the County
32 Office Fiscal Crisis and Management Assistance Team completes
33 the improvement plans specified in Section 41327.1 and has
34 completed a minimum of two reports identifying the *school*
35 district's progress in implementing the improvement plans.

36 (3) The administrator certifies that all necessary collective
37 bargaining agreements have been negotiated and ratified, and that
38 the agreements are consistent with the terms of the recovery plans.

39 (4) The *school* district has completed all reports required by the
40 Superintendent and the administrator.

1 (5) The Superintendent determines that future compliance by
2 the school district with the recovery plans approved pursuant to
3 paragraph (2) is probable.

4 (f) When the conditions stated in subdivision (e) have been met,
5 and at least 60 days after the Superintendent of Public Instruction
6 has notified the Legislature, the Department of Finance, the
7 Controller, and the county superintendent of schools that he or she
8 expects the conditions prescribed pursuant to this section to be
9 met, ~~the school district~~ governing board *of the school district* shall
10 regain all of its legal rights, duties, and powers, except for the
11 powers held by the trustee provided for pursuant to Article 2
12 (commencing with Section 41320). The Superintendent shall
13 appoint a trustee under Section 41320.1 to monitor and review the
14 operations of the *school* district until the conditions of subdivision
15 (b) of that section have been met.

16 (g) Notwithstanding subdivision (f), if the *school* district violates
17 ~~any~~ a provision of the recovery plans approved by the
18 Superintendent pursuant to this article within five years after the
19 trustee appointed pursuant to Section 41320.1 is removed *or after*
20 *the loan is repaid, whichever occurs later*, the Superintendent may
21 reassume, either directly or through an administrator appointed in
22 accordance with this section, all of the legal rights, duties, and
23 powers of the governing board of the *school* district. The
24 Superintendent shall return to ~~the school district~~ governing board
25 *of the school district* all of its legal rights, duties, and powers
26 reassumed under this subdivision when he or she determines that
27 future compliance with the approved recovery plans is probable,
28 or after a period of one year, whichever occurs later.

29 (h) Article 2 (commencing with Section 41320) shall apply
30 except as otherwise specified in this article.

31 (i) It is the intent of the Legislature that the legislative budget
32 subcommittees annually conduct a review of each qualifying school
33 district that includes an evaluation of the financial condition of the
34 *school* district, the impact of the recovery plans upon the *school*
35 district's educational program, and the efforts made by the
36 state-appointed administrator to obtain input from the community
37 and the governing board of the *school* district.

38 (j) (1) The district superintendent *of schools* is entitled to a due
39 process hearing for purposes of determining final compensation.
40 The final compensation of the district superintendent *of schools*

1 shall be between zero and six times his or her monthly salary. The
2 outcome of the due process hearing shall be reported to the
3 Superintendent ~~of Public Instruction~~ and the public. The
4 information provided to the public shall explain the rationale for
5 the compensation.

6 (2) This subdivision applies only to a contract for employment
7 negotiated on or after June 21, 2004.

8 (k) (1) When the Superintendent assumes control over a school
9 district pursuant to subdivision (b), he or she shall, in consultation
10 with the County Office Fiscal Crisis and Management Assistance
11 Team, review the fiscal oversight of the *school* district by the
12 county superintendent of schools. The Superintendent may consult
13 with other fiscal experts, including other county superintendents
14 of schools and regional fiscal teams, in conducting this review.

15 (2) Within three months of assuming control over a qualifying
16 *school* district, the Superintendent shall report his or her findings
17 to the Legislature and shall provide a copy of that report to the
18 Department of Finance. This report shall include findings as to
19 fiscal oversight actions that were or were not taken and may include
20 recommendations as to an appropriate legislative response to
21 improve fiscal oversight.

22 (3) If after performing the duties described in paragraphs (1)
23 and (2), the Superintendent determines that the county
24 superintendent of schools failed to carry out his or her
25 responsibilities for fiscal oversight as required by this code, the
26 Superintendent may exercise the authority of the county
27 superintendent of schools who has oversight responsibilities for a
28 qualifying school district. If the Superintendent finds, based on
29 the report required in paragraph (2), that the county superintendent
30 of schools failed to appropriately take into account particular types
31 of indicators of financial distress, or failed to take appropriate
32 remedial actions in the qualifying *school* district, the
33 Superintendent shall further investigate whether the county
34 superintendent of schools failed to take into account those
35 indicators, or similarly failed to take appropriate actions in other
36 *school* districts with negative or qualified certifications, and shall
37 provide an additional report on the fiscal oversight practices of the
38 county superintendent *of schools* to the appropriate policy and

- 1 fiscal committees of each house of the Legislature and the
- 2 Department of Finance.

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